

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE HOUSING ADVISORY AND APPEALS BOARD  
OF THE CITY OF LITTLE FALLS

In the Matter of the Alleged Violation of  
the Uniform Housing Code and Rental  
Housing Maintenance Code, at 406 NE  
2<sup>nd</sup> Street, Little Falls, Minnesota, by  
Messrs. William and Dennis Hollerman

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick, serving as Hearing Officer for the Little Falls Housing Advisory and Appeals Board (Housing Appeals Board), on March 29, 2004, at 10:00 a.m. in the Little Falls City Council Chamber. There were no post-hearing submissions. The record closed on the date of the hearing.

Peter Vogel, Little Falls City Attorney, 210 NE Second Street, Little Falls, MN 56345, appeared on behalf of the City of Little Falls (the City) and its Housing and Redevelopment Authority (Little Falls HRA). Dennis Hollerman, 408 NW 6<sup>th</sup> Avenue, Little Falls, MN 56345 and William Hollerman, 205 SW 3<sup>rd</sup> Street, Little Falls, MN 56345, appeared on their own behalf. Jack Josephsen, Rick Richardson, and Jerry Fabian, the Housing Appeals Board, attended the hearing.

This report is recommendation, not a final decision. Under the Little Falls Uniform Housing Code (UHC), Section 1305.03-.04, the Housing Appeals Board will provide the licensee the opportunity to present oral or written argument before the Board takes final action. The parties should contact the City Administrator to determine the procedure for presenting exceptions or argument.

**STATEMENT OF ISSUES**

Did the owners fail to adequately maintain the property located at 406 NE 2<sup>nd</sup> Street, Little Falls as required by the City's Rental Housing Code and the Uniform Housing Code?

If the property was inadequately maintained, can the City order that the deficiencies be corrected, or the building demolished?

The Administrative Law Judge concludes that the property was inadequately maintained and that the City can order that the deficiencies be corrected within a reasonable time or, failing correction, that the building be demolished.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. Dennis and William Hollerman own the premises located at 406 NE 2<sup>nd</sup> Street, Little Falls, Minnesota. The structure was built at some time before 1930 as a single-family home. Prior to the property being purchased by the Hollermans, the structure had been subdivided into three units. Each unit is leased by the Hollermans as an individual apartment. Neither Hollerman lives on the premises. They own a number of rental properties in Little Falls.

2. The City received a complaint regarding the Hollermans' building. On November 12, 2002, Karen Breeden of Interstate Home Inspections, acting on behalf of the City, conducted an inspection of the premises. All of the units were inspected, as well as the common areas of the building. Breeden wrote up a correction order that identified problems with the electrical system, plumbing, and other items in each unit and the common areas. Twenty-four items were identified for correction.<sup>[1]</sup> Most of the repairs were due to be completed by January 14, 2003, when the re-inspection was scheduled to occur. Six structural corrections, including repairing or replacing the porch floor and windows, cracked siding, and deteriorating wood, and painting were due to be completed by June 1, 2003.<sup>[2]</sup>

3. The Notice and Order requiring the repairs identified the cited problems as violating the City's Ordinance Number 39 Fifth Series.<sup>[3]</sup> The Notice and Order noted that **"Some or all of the repairs may require appropriate permits be obtained from the City of Little Falls and work performed by licensed contractors."**<sup>[4]</sup>

4. The most serious problem identified by Breeden is the state of the electrical supply for the building. The electrical service entrance cable enters the house through a mast, but then crosses a portion of the back porch to a cut-off switch. That portion of the entrance cable is unprotected and some of its insulation is worn. The wiring then continues to a fuse box. From the fuse box, the supply enters an electrical panel equipped with circuit breakers. Some wiring comes out of the bottom of the circuit breaker panel. That wiring is not attached to the wall within twelve inches of the panel or contained in a conduit.<sup>[5]</sup> The manner of wiring suggested that the circuit breaker panel had been attached to divide the electrical supply to the three individual units. Breeden noted that the circuit breaker panel lacked a sticker placed to certify that the panel had been inspected by the State electrical inspector. In addition to the loose wiring around the panel, an old braided Romex electrical cable was attached to the bottom of a ceiling joist, crossed the basement ceiling, and passed through the opening of a doorway.<sup>[6]</sup>

5. Breen re-inspected the premises on January 14, 2003. She noted that only a few items had been corrected from the previous inspection. Breen identified additional code violations that needed correction. She set February 11, 2003 as the next re-inspection date.

6. On February 11, 2003, Breen met with Dennis Hollerman and William Hollerman. She re-inspected the premises and found that a number of the violations in the individual units had been corrected. The electrical wiring to and from the circuit breaker panel was not corrected. The Hollermans asked for Breen to provide the codes that governed the conditions that she had identified as violations. Breen referred them to the codes maintained by the City at City Hall. Breen did not identify the specific code provisions that were the basis for her finding violations.<sup>[7]</sup>

7. Breen re-inspected the property on June 12, 2003 with Dennis and William Hollerman. None of the cited conditions had been addressed. The Hollermans stated that they would not be making repairs until the specific code violations were identified. Breen noted that the Hollermans had asserted the same arguments regarding citations issued on other rental properties that they own.<sup>[8]</sup> Breen forwarded the information regarding noncompliance with the repair orders to the City for administrative action.

8. On July 15, 2003, Breen wrote up an additional Notice and Order regarding the property. Breen identified the provisions in the Uniform Housing Code (UHC) governing each cited violation on the property. The citations included loose carpeting on stairs, windows lacking "hold-open" devices, improper wiring at the fuse box and circuit breaker panel, lack of lighting on the porch, broken or missing porch windows, deteriorated porch floor, improperly hung doors, missing screens, cracked siding, and deteriorated wood.<sup>[9]</sup> The cited UHC provisions were very generic. Breen had more fully described what she found to be violations in her discussions with the Hollermans. The repair order was forwarded to the City for administrative action.

9. Breen spoke with Dennis Hollerman and set October 7, 2003 as the date for final re-inspection of the property (also known as total compliance). The loose carpeting, window repair, porch lighting, and door repair were completed. About one-half of the porch windows were replaced. The remaining citations had not been addressed. Breen scheduled another total compliance inspection for December 2, 2003. No one appeared at the premises while Breen was there for the December 2 re-inspection.

10. The Hollermans took two specific actions regarding the condition of the wiring. To address the loose wires below the circuit breaker panel, they placed a wooden panel over the wiring below the panel.<sup>[10]</sup> The basement doorway was notched, the ceiling wiring pushed up into the notch, and a board used to isolate the notch from the doorway.<sup>[11]</sup> The change to the basement wiring did not move that wire up between the joists, or securely attach the wiring in a position that would prevent using that wire as a support (e.g. a clothesline).

11. On January 30, 2004, Breen contacted Dennis Hollerman to determine the status of repairs to the premises. Hollerman described the board placed over the wiring. Breen indicated that this was not up to the code standard for this wiring.

12. On February 5, 2004, Breen re-inspected the premises and photographed the portions of the electrical wiring that she believed to be noncompliant. These

portions were the circuit breaker panel wiring, the basement wire passing through the doorway, and what appeared to be a wire extending across the porch ceiling that was only attached to the ceiling at each end. This last item was actually a piece of copper tubing, not part to the electrical system. While in the basement, Breen noted that sewer had backed up and waste on the floor from that event had not been cleaned. On the porch, Breen noted that framing for a window had been done recently. No permit had been obtained for the window work.

13. The Hollermans had inquired of the City as to whether a permit was needed for replacing the windows. The Hollermans had not indicated that any structural work would be done to replace the windows. While doing the window replacement, the carpenter did additional structural work, including reframing the window and replacing the bottom plate of the wall below the window. This work goes beyond what the Hollermans indicated would be done for window replacement. Such structural work requires issuance of a permit.

14. On February 12, 2004, Breen met with the City Administrator, City Attorney, and City Building Official to determine how to proceed.

15. Howard Hedin, a State Electrical Inspector, is a licensed, master electrician. Hedin inspects electrical installations in Morrison County. At the request of the City, he visited the Hollerman property a month prior to the hearing and looked at the electrical system. His visit was only a cursory examination and not as thorough as a full inspection of the premises. Hedin concluded that the modifications to the original installation (including the circuit breaker panel) did not comply with any vintage of the electrical code. Specific problems identified by Hedin include: the service was not located inside the building on an exterior wall, the entrance cable was not protected by conduit, and the sheathing on the entrance cable was worn.

16. Hedin indicated that the length of the entrance cable needed to be minimized since that portion of the electrical service is not equipped with fuses. Any short in that cable would result in "a big football of fire."<sup>[12]</sup> The absence of stapling for the wires within twelve inches of the circuit breaker panel is a code violation. The use of a board to cover those wires does not correct the violation. The electrical wire going through the doorway failed to meet code since the wire needed to be attached within the joists, not suspended below the joists. Hedin concluded that the condition of the electrical wiring in the premises was dangerous.

17. Hedin identified the changes that needed to be made to the electrical service to eliminate the safety hazard posed by the existing wiring. The location of the service entrance must be moved to shorten the length of entrance cable. The entrance cable must be placed in conduit. The circuit breaker panel must clearly identify which unit is served by each breaker. The wiring from the panel must be properly secured.

18. The modifications of the original electrical system have never been inspected. Hedin admitted on cross-examination that he could not be "absolutely certain" that the new panel had never been inspected. But absolute certainty is not

required. Facts must be proved by a preponderance of the evidence. The greater weight of the evidence is that the panel was never inspected. The newer work at the circuit breaker panel lacks the sticker identifying inspected electrical work. The condition of the electrical system, particularly the conditions around the circuit breaker panel, shows that the work was not performed pursuant to any code applicable at the time and was not done by a licensed electrical contractor as required in a commercial building.

19. The City issued a Notice of Hearing in the matter on March 22, 2004, which set the hearing date and time for March 29, 2004 at 10:00 a.m. at the Little Falls City Council Chamber. The Notice of Hearing identified the following corrections to deficiencies found and the Uniform Housing Code standard that governs the area as follows:

- a. Repair the wiring at the fuse panels in the rear porch area to be code compliant by a licensed electrician, as it is currently unprotected and improperly installed. (UHC 1101.5)
- b. Repair the wiring in the basement doorway to the washing machine area to be code compliant by a licensed electrician. (UHC 1101.5)
- c. Obtain permits for repairs to the rear porch area and window installation on the rear porch area of the dwelling and have it inspected by the building official of the City of Little Falls. (UHC 1101.3)
- d. Repair/replace all missing screens on the entire dwelling. (UHC 101.10)
- e. Repair/replace the cracked siding on the dwelling. (UHC 1101.8)
- f. Repair/replace all deteriorated wood on the dwelling to be weather-tight. (UHC 1001.8)
- g. Paint all deteriorated wood on the dwelling to be weatherproof. (UHC 1001.8)
- h. Clean and sanitize the basement floor from a sewer backup. (UHC 1001.11)<sup>[13]</sup>

20. None of the repairs identified in the Notice of Hearing have been completed. While some of the citations to the UHC in the Notice of Hearing are not correct, the applicable standards all fall within Chapter 10 of the UHC. All of the citations in the Notice of Hearing constitute violations of standards in Chapter 10 of the UHC, except for the failure to obtain a permit before repairing the porch and reframing the porch window. Those failures violate Chapter 3 of the UHC, which requires obtaining a permit before making structural alterations to a building.<sup>[14]</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Housing Advisory and Appeals Board of the City of Little Falls, and the Administrative Law Judge have jurisdiction in this matter pursuant to the Little Falls City Code, Chapter 10, Section 10.40 and Minn. Stat. § 14.55.

2. The City of Little Falls has fulfilled all relevant, substantive and procedural requirements of law and rule.

3. The City of Little Falls has given proper notice of the hearing in this matter, including proper notice in accordance with the requirements as set forth in the Uniform Housing Code of the City of Little Falls.

4. The Notice of Hearing issued by the City incorrectly cited a number of code references of the violations identified in the building. None of these errors resulted in improper notice of the issues raised in this proceeding.

5. The building constitutes rental housing governed by the City's Rental Housing Maintenance Code.<sup>[15]</sup>

6. Where a portion of a building subject to the Rental Housing Maintenance Code is unsafe or hazardous, the condition must be corrected to current building codes.<sup>[16]</sup>

7. The deficiencies cited in the electrical system and exterior condition of the premises render the building unsafe and hazardous. Those deficiencies must be corrected to current code standards.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## **RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Housing Advisory and Appeals Board of the City of Little Falls find that there are violations of the Uniform Housing Code and Rental Housing Maintenance Code at 406 NE 2<sup>nd</sup> Street, Little Falls, Minnesota, and order that those violations be corrected within sixty days or that the building be demolished.

Dated this 13<sup>th</sup> day of April, 2004.

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S/ Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Tape recorded-three tapes

## **MEMORANDUM**

At the hearing, the Hollermans maintained that the City failed to disclose the existence of the appeals process and that this failure should have some impact on the outcome of this proceeding. The purpose of the Uniform Housing Code and Rental Housing Maintenance Code is to ensure the health and safety of persons living in rental housing. The problems identified in the building were code violations a year ago and those problems are code violations now. The only difference is that a year has gone by in which the Hollermans have not fixed the problems. The Hollermans are now obligated to correct the violations or have the premises demolished. The Hollermans have not been prejudiced by any delay in initiating the appeal process.

The Hollermans assert that the City did not provide a copy of the UHC and therefore, they should not be required comply with those code provisions. But the Hollermans acknowledge that the July 2003 compliance order had code provisions included. The Hollermans have known what code provisions are at issue for at least six months. Even without the specific code citations, the conditions in the building that needed correction were accurately identified.

Inspector Hedin emphatically noted that the work on the electrical system on the premises was required to be done by a licensed electrical contractor. A licensed electrical contractor brings the expertise needed to identify problems in the electrical system and correct those problems to bring the system up to current standards. The problems present in the electrical system on the rental property are obvious and serious.

Building codes, such as the electrical code, are revised every two years. There is no obligation to modify the existing installed system just because the code has changed. This practice is known as "grandfathering." The Hollermans maintained that grandfathering should apply to their situation and the current condition of the electrical system should not constitute a code violation. A system must be code-compliant at the time of installation to fall within this exemption. There is no evidence that the electrical work ever complied with the code in force at the time that the work was done. On the contrary, the evidence in the record demonstrates that the electrical system was not code-compliant at the time the work was done and that grandfathering is not appropriate.

In addition, the Rental Housing Maintenance Code adopted by the City expressly addresses grandfathering. Section 10.20 of the Residential Housing Maintenance code states in pertinent part:

Subd. 3. Application: This Rental Housing Maintenance Code applies to buildings, their premises, accessory structures thereto, and dwelling units therein, used or designated to be used as rented residences by tenants.

Notwithstanding, rental premises lawfully existing on the January 1, 2002, the effective date of this Rental Housing Maintenance Code and registered as provided herein, need not be altered to comply with the City Code, except in the following cases:

\* \* \*

C. If the building or a portion thereof is determined to be unsafe or hazardous by the Building Official, pursuant to this Rental Housing Maintenance Code, state codes, or state law, that portion deemed unsafe must be corrected to current codes.<sup>[\[17\]](#)</sup>

In this matter, both the City's building inspector and a State electrical inspector have identified the existing wiring in the building as unsafe. By operation of Section 10.20, the electrical system of the building must be corrected to current codes. Grandfathering is inapplicable here. The electrical system must be brought up to code. It would be reasonable to allow 60 days for an electrical contractor to do the necessary work.

The exterior work identified in the Notice of Hearing was not significantly discussed by the City or challenged by the Hollermans. Faulty weather protection is a basis for finding the building substandard under UHC 1001.8. The record established by the repeated inspections shows that the exterior of the premises must be repaired to bring the building into compliance. The sanitary provision, UHC 1001.11, covers the sewage back up and its aftermath. That situation must be addressed by the Hollermans. The Hollermans indicated that they have contracted for the external repairs to be done as soon as the weather permits.

The only other issue is the lack of a permit for repairs and window installation on the rear porch area. The Hollermans did not obtain a permit before doing the framing work for the window at the base of the wall. They asserted that they were told that a permit was not required for replacing windows. The ALJ concludes that the Hollermans inadequately described the work to be done when they made their inquiry. The appropriate response is to now obtain the required permit and have the work inspected for code compliance.

S.M.M.



## DECISION

After review of the hearing record in this matter and review of the Administrative Law Judge's recommendation, the Little Falls Housing Housing Advisory and Appeals Board:

Adopts the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge as the Final Order of the Board.

Declines to adopt the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge as the Final Order of the Board, for the reasons set forth in the attached Memorandum.

Modifies the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge as the Final Order of the Board, in the manner and for the reasons set forth in the attached Memorandum.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Board Member

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Board Member

<sup>[1]</sup> Ex. 3, Notice and Order, November 12, 2002.

<sup>[2]</sup> *Id.*

<sup>[3]</sup> *Id.*

<sup>[4]</sup> *Id.* (emphasis in original).

<sup>[5]</sup> Ex. 3, event summary photographs.

- [\[6\]](#) *Id.*
- [\[7\]](#) Testimony of Breen.
- [\[8\]](#) Ex. 3, attached summary.
- [\[9\]](#) Ex. 3, July 15, 2003 citation.
- [\[10\]](#) Ex. 3, attached summary photographs.
- [\[11\]](#) *Id.*
- [\[12\]](#) Testimony of Hedin.
- [\[13\]](#) Exhibit 3, Notice of Hearing (UHC citations are in original).
- [\[14\]](#) Exhibit 2, at 5.
- [\[15\]](#) Little Falls City Code, Chapter 10, Section 10.40
- [\[16\]](#) Little Falls City Code, Chapter 10, Section 10.40, subd. 3.C.
- [\[17\]](#) Ex. 1.